

**Remarks**

Claims 1, 13, 16 and 46 are currently amended. Claims 2-12, 14-15, 17-45 and 47-50 are as originally filed. Claims 1-50 are currently pending.

**Claim Rejections under 35 USC § 101**

In Section 1 of the Office Action, the Examiner rejects claims 1-17 and 46-50 under 35 U.S.C. § 101 based on the assertion that the word “network” recited in these claims can mean a manual verbal network, and therefore these claims fail to meet a “technology requirement.” Applicant respectfully disagrees that 35 U.S.C. § 101 includes a “technology requirement.” However, to advance the prosecution and address the Examiner’s concerns, independent claims 1, 16 and 46 and dependent claim 13 have been amended to recite “at least one network including computers”. Withdrawal of the Section 101 rejection is requested.

**Claim Rejections under 35 USC § 103**

In Section 2 of the Office Action, the Examiner rejects claims 1-50 under 35 U.S.C. § 103 as unpatentable over U.S. Patent No. 5,101,353 to Lupien et al (“Lupien”). Applicant respectfully traverses this rejection.

Independent claims 1, 16, 18, 33, 34, 39, 41 and 46 claim methods, computer program products and data processing systems related to the trading of interests with reserve. As described at page 1 of the present application, “reserve” refers to a portion of an intended trade, *e.g.*, an order or quotation, that is withheld from being disclosed to the market until such time as the other portion of the order or quotation, which is disclosed to the market, has been executed.

In particular, independent claims 1, 18 and 34 claim, among other things:

- receiving terms for a total desired trade of interests, said terms comprising an initial price, an initial quantity, and a reserve quantity;
- associating with said desired trade a reserve price change;
- disclosing terms of a first proposed trade of said interest to others, said terms for a first proposed trade comprising said initial price, and said initial quantity; and
- upon acceptance of said first proposed trade, disclosing terms of a second proposed trade of said interest to others, said terms for a second proposed trade comprising a second price, and a second quantity, said second price being equal to said initial price changed by said reserve price change, and said second quantity comprising at least a portion of said reserve quantity.

Independent claims 16, 33 and 39 of the present application claim, among other things:

- where an order is entered with a quantity and price disclosed to others and a reserve, undisclosed quantity, the disclosure of terms of a subsequent order to others, said terms for said subsequent order comprising a subsequent price and a subsequent quantity, said subsequent price being equal to said disclosed price changed by a reserve price change, and said subsequent quantity comprising at least a portion of said reserve quantity.

Independent claims 41 and 46 of the present application claim, among other things:

- in response to accepting a trade for a quantity of an order disclosed to others at a price disclosed to others, the order including a reserve quantity which is not to be disclosed to others at least initially, automatically initiating disclosure to others a quantity from reserve at a price changed from said price of said quantity previously disclosed to others by a reserve price change.

In Section 2 of the Office Action, the Examiner asserts that Lupien discloses all the methods, systems and products described in claims 1-50. Applicant respectfully disagrees.

Lupien discloses an automated system (the "Lupien System") for managing portfolios of securities for clients. (Abstract). Using information reflecting securities market

information on corporate actions (*e.g.*, stock splits, recapitalizations, and dividends), a measure of variability of each security in a client's portfolio (determined as the standard deviation or variance of price fluctuations), and a measure of the "normal" price of each security in the portfolio (calculated as an exponentially weighted average of recent trades and/or quotations adjusted for overall market movement), the Lupien System analyzes each security in the client's portfolio with respect to customized criteria for the client to generate buy and sell orders and/or sets of orders at specific prices for each security in the portfolio. (Col. 9, line 43 to Col. 10, line 30). Lupien discloses that orders include price and size terms and that orders may be of several types such as market, limit, fill or kill, and all-or-nothing. (Col. 12, lines 60-66 and Col. 14, lines 51-52).

Orders generated by the Lupien System are displayed to each client of the system. (Col. 11, lines 48-50). If an order generated for one client matches an order generated for another client, the Lupien System matches the two orders and a trade occurs. (Col. 11, lines 51-55). If an order is not executed within the Lupien System, the system decides where and how much of the order to place on which external automated market, broker, exchange and/or the system's network. (Col. 11, lines 55-60). As a trading day progresses, the Lupien System updates the information mentioned above used to generate orders and it uses that information to continually add, alter, or cancel buy and sell orders. (Col. 12, lines 26-30).

The foregoing is not the trading of orders involving a reserve, as claimed in independent claims 1, 18 and 34. Specifically, the foregoing is not receiving terms, which include a reserve quantity, for a total desired trade of interests, and is not associating a reserve price change with the desired trade, as claimed in claims 1, 18 and 34. In addition, upon acceptance of a proposed trade of the interest for an initial price and an initial quantity, the foregoing is not disclosing terms of a second proposed trade of the interest to others, said terms for a second

proposed trade comprising a second price being equal to said initial price changed by said reserve price change and a second quantity comprising at least a portion of said reserve quantity, as claimed in claims 1, 18 and 34. Lupien simply does not disclose the subject matter in claim 1, 18 and 34 discussed above.

Furthermore, Lupien does not disclose or suggest, with respect to an order that is entered with a quantity and price disclosed to others and a reserve quantity not disclosed to others, the disclosure to others of the terms of a subsequent order, said terms comprising a subsequent price equal to said disclosed price changed by a reserve price change and a subsequent quantity comprising at least a portion of said reserve quantity, as claimed in independent claims 16, 33 and 39. In addition, Lupien does not disclose or suggest, in response to accepting a trade for a quantity of an order disclosed to others at a price disclosed to others, the order including a reserve quantity which is not to be disclosed to others at least initially, automatically initiating disclosure to others a quantity from reserve at a price changed from said price of said quantity previously disclosed to others by a reserve price change, as claimed in independent claims 41 and 46.

For at least the reasons above, Applicant submits that Lupien does not anticipate or obviate independent claims 1, 16, 18, 33, 34, 39, 41 and 46 of the present application, and that these claims are therefore allowable over Lupien. With respect to pending dependent claims 2-15, 17, 19-32, 35-38, 40, 42-45 and 47-50, as these claims depend from claims 1, 16, 18, 33, 34, 39, 41 and 46, Applicant submit that these dependent claims are also allowable over Lupien for at least the same reasons.

In Section 3 of the Office Action, the Examiner appears to raise a separate ground for rejecting the claims of the present application that is distinct from the ground based on Lupien

as discussed above. It appears that, in Section 3 of the Office Action, the Examiner is asserting that the following is a manual practice that is common knowledge:

spreading out buy and sell order quantities to avoid price disruption in the marketplace due to the large quantity of securities in the order, by offering in the market only a part of the total order at a time and then offering the remaining parts at possibly different prices, but only after the first portion transaction has been completed ... (Office Action, dated March 31, 2005, p. 4).

It appears further that, in Section 3 of the Office Action, the Examiner is rejecting the claims of the present application as obvious by implying that the manual practice asserted as common knowledge relates to all claims and that the claims are obvious because automating a known manual activity is obvious.

Applicant respectfully submits that the Examiner's rejection in Section 3 of the Office Action is improper. The Examiner's rejection in this Section of the Office Action is based solely on the asserted common knowledge. However, "[i]t is never appropriate to rely solely on 'common knowledge' in the art without evidentiary support in the record, as the principal evidence upon which a rejection [is] based." MPEP 2144.03, Rev. 2, May 2004 at p. 2100-137 (citing *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001)).

Furthermore, Applicant respectfully rejects any implication that the practice described above relates to the claims of the present application. Applicant respectfully requests the Examiner to point out which parts of the practice described above meets which elements of which claims of the present application.

Finally, without accepting the Examiner's description of the practice above as true or accurate, Applicant respectfully disagrees that such a practice was common knowledge in the art at the time of the invention. As shown above, the Examiner asserts that "to avoid price disruption

in the marketplace due to the large quantity of securities in the order” it was a known practice to spread out buy and sell order quantities “by offering in the market only a part of the total order at a time and then offering the remaining parts at possibly different prices....” Avoiding price disruption in the marketplace may be avoided by simply spreading out order quantities, *e.g.*, offering a part of a large order first and then offering the remaining parts at later times. Offering the remaining parts at different prices would not be necessary to achieve this goal, and absent a prior art reference disclosing this, should not be considered to be common knowledge.

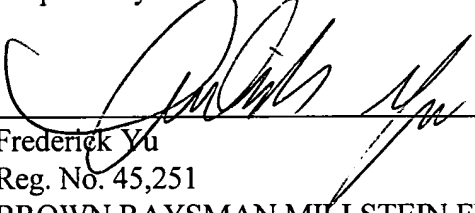
For the reasons above, Applicant respectfully submits that the rejection asserted in Section 3 of the Office Action is improper and/or unfounded, and respectfully requests that this rejection be withdrawn.

**Conclusion**

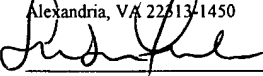
For at least the reasons stated above, Applicant respectfully submits that all pending claims 1-50 are allowable over the prior art, and allowance of all claims is respectfully solicited. To expedite prosecution of this application to allowance, the Examiner is invited to call the Applicant's undersigned representative to discuss any issues relating to this application.

Respectfully submitted,

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Date